

Council Meeting  
March 18, 2008

Honorable Mayor and Members  
of the City Council  
City Hall  
Torrance, California

Members of the Council:

**SUBJECT: SECOND AND FINAL READING OF ORDINANCE 3705**

**RECOMMENDATION:**

Second and Final Reading of **ORDINANCE NO. 3705** amending the Torrance Municipal Code to clarify its original intent and to remove obsolete references in the Telephone and Teletypewriter Exchange Users Tax.

**BACKGROUND:**

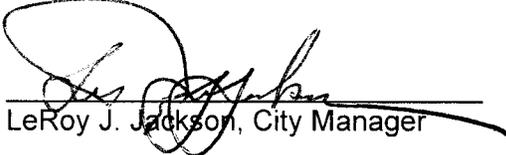
At the regular meeting of the City Council held on the 4th day of March 2008, this Ordinance was introduced and approved for its first reading by the following roll call vote:

AYES:	COUNCILMEMBERS:	Barnett, Brewer, Nowatka, Sutherland, Witkowsky, and Mayor Scotto.
NOES:	COUNCILMEMBERS:	None.
ABSTAIN:	COUNCILMEMBERS:	None.
ABSENT:	COUNCILMEMBERS:	Drevno.

Respectfully submitted,

  
\_\_\_\_\_  
Sue Herbers, City Clerk

NOTED:

  
\_\_\_\_\_  
LeRoy J. Jackson, City Manager

Attachment A: Ordinance 3705



**ORDINANCE NO. 3705**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TORRANCE, CALIFORNIA AMENDING THE TORRANCE MUNICIPAL CODE TO CLARIFY ITS ORIGINAL INTENT AND TO REMOVE OBSOLETE REFERENCES IN THE TELEPHONE AND TELETYPEWRITER EXCHANGE USERS TAX**

**WHEREAS**, Chapter 25 of the Torrance Municipal Code imposes a tax on telephone communications services by referring to definitions in the federal excise tax on telephone services administered by the Internal Revenue Service (IRS). The common understanding of those definitions when the City gave the tax its current scope upon the adoption of Ordinance No. 1983 in 1991 was set forth in the IRS' Revenue Ruling 79-404;

**WHEREAS**, on May 25, 2006, the IRS announced in Notice 2006-50 that it has now changed its interpretation of the definitions in the federal excise tax and specifically revoked notices adopted in 2005 which had reaffirmed Revenue Ruling 79-404;

**WHEREAS**, subsequent to the issuance of Notice 2006-50, the IRS issued Notice 2007-11, announcing that Notice 2006-50 does not affect the ability of state or local governments to impose or collect telecommunication taxes under the respective statutes of those governments;

**WHEREAS**, the City Council does not wish to adopt the Internal Revenue Service's new understanding of the definitions of the federal excise tax in implementing the City's tax, but rather wishes to continue to impose the City's telephone and teletypewriter exchange users tax as it has been historically imposed;

**WHEREAS**, the amendments made under this Ordinance are not intended to make any change in the way in which the utility users tax on telephone services is calculated, imposed or administered. Therefore the changes made by this ordinance describing the base of the telephone and teletypewriter exchange users tax, and clarifying certain administrative requirements, are not intended to constitute a change in methodology or otherwise constitute a tax increase for purposes of Proposition 218 and this ordinance shall be interpreted in light of that intent;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TORRANCE DOES ORDAIN AS FOLLOWS:**

**Section 1.** Code Amendment. Section 225.1.3 of the Torrance Municipal Code is hereby amended to read as follows:

"TELEPHONE AND TELETYPEWRITER EXCHANGE USERS' TAX.

- a) There is hereby imposed a tax upon every person in the City using interstate, intrastate or international telephone communication or teletypewriter exchange services in the City, or mobile or cellular telephone communication when the owner or lessee of the telephone has a billing address in the City. The tax imposed by this Section shall be six and one-half (6½) percent of the charges made for such service and shall be paid by the person paying for such services.
- b) The tax imposed in this Section shall be collected from the service user by the person providing the telephone communication services or teletypewriter exchange services. The amount of tax collected in one (1) month shall be remitted to the Director on or before the 20th day of the following month.

- c) The following shall be exempt from the tax imposed by this section:
- (1) Charges paid for by inserting coins in coin-operated telephones available to the public with respect to local telephone service, or with respect to long distance telephone service if the charge for such long distance telephone service is less than 25 cents; except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be subject to the tax.
  - (2) Except with respect to local telephone service, on any charges for services used in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting, or in the dissemination of news through the public press, or a news ticker service furnishing a general news service similar to that of the public press, or by means of radio broadcasting, if the charge for such service is billed in writing to such person.
  - (3) Charges for services furnished to an international organization or to the American National Red Cross.
  - (4) Charges for any long distance telephone service which originates within a combat zone, as defined in section 112 of the Internal Revenue Code, from a member of the Armed Forces of the United States performing service in such combat zone, as determined under such section, provided a certificate, setting forth such facts as the Secretary of the U.S. Treasury may by regulations prescribe, is furnished to the person receiving such payment.
  - (5) Charges for any long distance telephone service to the extent that the amount so paid is for use by a common carrier, telephone or telegraph company, or radio broadcasting station or network in the conduct of its business as such.
  - (6) Amounts paid by a nonprofit hospital for services furnished to such organization. For purposes of this subsection, the term 'nonprofit hospital' means a hospital referred to in Internal Revenue Code section 170(b)(1)(A)(iii) which is exempt from income tax under Internal Revenue Code section 501(a).
  - (7) Charges for services or facilities furnished to the government of any State, or any political subdivision thereof, or the District of Columbia.
  - (8) Charges paid by a nonprofit educational organization for services or facilities furnished to such organization. For purposes of this subsection, the term 'nonprofit educational organization' means an educational organization described in Internal Revenue Code section 170(b)(1)(A)(ii) which is exempt from income tax under Internal Revenue Code section 501(a). The term also includes a school operated as an activity of an organization described in Internal Revenue Code section 501(c)(3) which is exempt from income tax under Internal Revenue Code section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.
  - (9) Charges for maritime mobile services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations as such section existed on October 1, 1967."

**Section 2.** Code Addition. Section 225.1.22 of the Torrance Municipal Code is hereby adopted to read as follows to read as follows:

“225.1.22 BUNDLING TAXABLE AND NONTAXABLE CHARGES.

If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the Service Supplier or taxpayer reasonably identifies actual charges not subject to the utility users tax based upon books and records that are kept in the regular course of business, in a manner consistent with generally accepted accounting principles. The Service Supplier or Taxpayer has the burden of proving to the reasonable satisfaction of the Director the proper apportionment of taxable and nontaxable charges.”

**Section 3.** Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

**Section 4.** Construction. Sections 1 and 2 of this Ordinance are declaratory of existing law and express the intent of the City in the adoption of the utility users tax on telephones by Ordinance No. 1983 in [YEAR]. The adoption of this Ordinance therefore does not constitute a revision in the methodology by which the City calculates the tax or otherwise constitute a tax increase for which voter approval is required, and this Ordinance shall be interpreted in light of that intent.

**Section 5.** Effective Date. This Ordinance shall take effect thirty days after adoption, as provided under § 726 of the Torrance City Charter.

**Section 6.** Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published according to law.

Introduced and approved this 4th day of March, 2008.

Adopted and passed this \_\_\_\_\_ day of March, 2008.

APPROVED AS TO FORM:  
JOHN FELLOWS III, City Attorney

\_\_\_\_\_  
Mayor Frank Scotto  
ATTEST:

by \_\_\_\_\_  
Ronald T. Pohl, Assistant City Attorney

\_\_\_\_\_  
Sue Herbers, City Clerk